STATE OF MICHIGAN

COURT OF APPEALS

RODNEY URSERY, Plaintiff-Appellant,	UNPUBLISHED July 31, 2007
v	No. 271560 Wayne Circuit Court
OPTION ONE MORTGAGE CORPORATION, Defendant-Appellee.	LC No. 04-427037-CK

Before: Wilder, P.J., and Sawyer and Davis, JJ.

PER CURIAM.

Ursery appeals as of right the trial court's order granting summary disposition to defendant Option One Mortgage Corporation (Option One). In this action, Ursery seeks (a) to set aside the mortgage foreclosure, sale and sheriff's deed, (b) to quiet title to the mortgaged property in himself, and (c) damages. We affirm.

I

A

Although the facts are documentary and therefore largely undisputed, they are stated here at length to clarify the nature of this dispute. The gravamen of the story is that Ursery defaulted on his mortgage loan and Option One foreclosed.

1

a

On February 20, 2001, Ursery made a 30-year adjustable rate note which he gave to The Equity Group Financial, Inc., a lender to financially stressed borrowers. The note was secured by a mortgage on the property at issue, commonly known as 1987 Collingwood. The mortgage was executed on the same date. The Equity Group immediately assigned the note and mortgage to Option One.

The note, in the principal amount of $37,100, provided an initial annual interest rate of 14.2% for about two years. (The initial monthly payment was $445.47.) Then, on March 1, 2003, the interest rate would float to a rate of eight percentage points over the "current index"

(an average of interbank rates). The interest rate would then be adjusted every six months. The note imposed limits within which the interest rate would float:

> The interest rate I am required to pay at the first Change Date [March 1, 2003,] will not be greater than 17.200% or less than 14.200%. Thereafter, my interest rate will never be increased or decreased on any single Change Date by more than one percentage point (1.0%) from the rate of interest I have been paying for the preceding six months. In no event will my interest rate be greater than 20.200% or less than 14.200%.

First and foremost, Ursery promised to repay the loan: "In return for the loan that I have received, *I promise to pay U.S. $37,100.00* (this amount is called 'principal'), *plus interest, to the order of the lender*." (Emphasis added.) Ursery expressly agreed that the lender could transfer the note (to a person who would be called the "Note Holder").

Ursery promised to make payments on the *first* day of *each* month: "I will make my monthly payments on the first day of each month . . . ." Ursery also promised to make payments until the loan, and any charges, were paid-off: "*I will make these monthly payments every month until I have paid all of the principal and interest* and any other charges described below that I may owe under this Note." (Emphasis added.)

Ursery agreed to pay late charges if the note holder had not received payment by a certain time, and agreed to the level of such charges: "*If the Note Holder has not received the full amount of any monthly payment by the end of 15 calendar days after the date it is due*, I will pay a late charge to the Note Holder. The amount of the charge will be 6.000% of my overdue payment of principal and interest. . . ." (Emphasis added.) However, the note defined default as a failure to make a payment when due (*not* a failure to make a payment before a late charge was imposed): "*If I do not pay the full amount of each monthly payment on the date it is due, I will be in default*." (Emphasis added.) Thus, a default occurs *before* a late fee may be imposed.

The note contained an acceleration clause upon default: "*If I am in default, the Note Holder may require me to pay immediately the full amount* of principal which has not been paid and all interest that I owe on that amount, together with any other charges that I owe under this Note or the Security Instrument." (Emphasis added.) The note also contained a provision permitting the note holder to send a notice of default:

> If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

b

The mortgage secured payment of the note and gave Option One a power of sale:

> This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest . . . and (c) the performance of Borrower's

> covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, warrant, grant and convey to Lender, *with power of sale*, the following described property . . . 1987 COLLINGWOOD STREET . . . . [First emphasis added.]

The mortgage also contained a no-waiver clause: "Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy." In other words, if a default occurred and Option One did not foreclose, this would not preclude foreclosure later, or after another default.

The mortgage provided a clause providing for acceleration upon default, and remedies in the event thereof:

> If any installment under the Note or notes secured hereby is not paid when due, or if Borrower should be in default under any provision of this Security Instrument . . . *all sums secured by this Security Instrument and accrued interest thereon shall at once become due and payable* at the option of Lender without prior notice, except as otherwise required by applicable law, and regardless of any prior forbearance. *In such event, Lender*, at its option, and subject to applicable law, *may then or thereafter invoke the power of sale* and/or any other remedies or take any other actions permitted by applicable law. Lender will collect all expenses incurred in pursuing the remedies described in this Paragraph 21, including, but not limited to, reasonable attorneys' fees and costs of title evidence. [Emphases added.]

The mortgage also provided as follows in the event Option One elected to exercise the power of sale in the event of a default: "If Lender invokes the power of sale, Lender shall give notice of sale to Borrower . . . . Lender shall publish and post the notice of sale, and the Property shall be sold in the manner prescribed by applicable law. *Lender or its designee may purchase the Property at any sale*." (Emphasis added.) The mortgage provided that if a sale occurred, the proceeds would go toward expenses of the sale and payment of the debt, and then anything left would be "excess": "The proceeds of the sale shall be applied in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it."

The mortgage provided a *strictly time-limited and conditional* right to reinstate the mortgage after an acceleration:

> If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of (a) 5 days . . . before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument.
>
> Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays

> all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured herby shall remain fully effective as if no acceleration had occurred. . . .
>
> The mortgage also provided:
>
> - "Time is of the essence in the performance of each provision of this Security Instrument."
>
> - "This Security Instrument may be modified or amended only by an agreement in writing signed by Borrower and Lender."

2

Ursery promptly fell behind in his payments,[1] which were sporadic over the course of the loan.[2] Foreclosure proceedings[3] were begun in 2002 but were discontinued.

In April 2003, Option One resumed the foreclosure process because of Ursery's continued defaults. A notice of foreclosure was published for five weeks in the Detroit Legal News. Within 15 days after the first publication, a copy was posted in a conspicuous place on the property.

On April 16, 2003, Ursery advised Option One that he was making payments on his car to avoid repossession. On April 17, 2003, Option One called Ursery and left a message on his answering machine. On April 28, 2003, a foreclosure sale date of May 22, 2003, was scheduled

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[1] Late charges of $26.73 were assessed on July 16, 2001; September 21, 2001, October 16, 2001; December 17, 2001; January 16, 2002; March 18, 2002; April 16, 2002; June 17, 2002; July 16, 2002; August 16, 2002; September 16, 2002; October 16, 2002; November 18, 2002; December 16, 2002; January 16, 2003; February 18, 2003; March 17, 2003; April 16, 2003; May 16, 2003; June 16, 2003; July 16, 2003; August 18, 2003; and September 16, 2003.

[2] Payment records indicate that Option One processed the following payments on the following dates: April 12, 2001, $1,336.41; July 27, 2001, $472.20; August 16, 2001, $445.47; September 26, 2001, $1,243.00; September 29, 2001, $472.20; October 23, 2001, $472.20; November 15, 2001, $445.48; February 6, 2002, $1,700.61; May 8, 2002, $1,151.56; May 16, 2002, $549.05; May 16, 2002, $602.51; July 25, 2002, $1,243.00; August 5, 2002, $1,167.78; October 1, 2002, $1,135.86; December 27, 2002, $1,132.64; February 4, 2003, $1,427.68; and April 15, 2003, $2,394.73. Clearly, Ursery's payments failed to comply with the note.

[3] The revised judicature act (RJA) provides that "[e]very mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement . . . ." MCL 600.3201.

in Option One's process notes. On April 30, 2003, Option One called Ursery, but again got his answering machine.

On May 1, 2003, Option One received a payment of $1,793.80 from Ursery. Option One made arrangements to return this payment to Ursery, because a foreclosure sale was already set and Option One was unable to contact Ursery. On May 8, 2003, Option One called Ursery, but was again unable to reach him; it left a message on his answering machine. "Unable to reach borrower" appears numerous times in Option One's process notes around this time.[4] On May 12, 2003, Option One's process note states: "Called home and left message to call . . . . Advising . . . to return funds in vault. . . Sale set and *not enough for reinstatement* . . . . *Unable to reach borrower*." (Emphasis added.) Thus, the $1,793.80 payment was not enough for reinstatement.

A process note of May 15, 2003, indicates that the amount required for reinstatement was $6,779.57. Thus, plaintiff's attempted payment of $1,793.80 fell short of what was required for reinstatement. The process note of May 15, 2003, states: "Foreclosure sale is set for 05/22 . . . . Have reinstatement in the system gt [sic] 05/21 for borrower . . . . Had 1,793.80 in vault that is in the process of being returned *as no contact can be made with the borrower and no arrangements*. . . . The r/i [reinstatement amount] is 6,779.57 . . . ." (Emphasis added.)

On May 16, 2003, Option One returned Ursery's check of $1,793.80. On May 19, 2003, Ursery (finally) called Option One. The process note states: "Customer states will send another 1k plus 1793.80 adv customer will hold sale if funds sent and will do a repayment plan for balance." A $1,000 payment from Ursery was received on May 20, 2003 at 4:30 p.m.

In a faxed letter dated May 22, 2003, Option One advised Ursery that, due to Ursery's default, Option One accelerated Ursery's debt, made a demand for reinstatement, and began foreclosure proceedings. However, in that faxed letter, Option One noted that Ursery requested a repayment plan to allow reinstatement over a period of time. Option One offered a repayment plan *on certain conditions*:

> 1. All payments must be in certified form . . . .
>
> 2. All payments must be received on or before the specified date. <u>THERE WILL BE NO GRACE PERIOD</u>.
>
> 3. This agreement must be signed and returned to Option One no later than 5/23/03.
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> 4. The acceptance of any payments as set forth in the attached agreement does not constitute a waiver of Option One's rights that now exist or may arise in the future under the loan documents including, without limitation, it's [sic; its] acceleration rights.

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[4] The process notes are converted from all capital letters to normal script, and most abbreviations are spelled out for clarity.

> 5. Please mail or fax this signed agreement to Option One's Loss Mitigation Department . . . .
>
> *Failure to comply with any of these conditions will cause the agreement to be null and void* and Option One will proceed with foreclosure proceedings without further notice or demand. [Last emphasis added.]

The proposed repayment plan was also sent via FedEx overnight mail to Ursery, and received (signed-for) by him on May 23, 2003.

The proposed repayment plan noted that the amount required to reinstate Ursery's loan as of May 21, 2003, was $6,779.57. The proposed repayment plan noted that the first required payment was $2,793.80. The next six payments, of $813.85 each, were due on the 25th of each month from June to November 2003. (Also on May 22, 2003, an addendum was prepared to the repayment agreement, providing that payment numbers 8 through 13, in the amount of $813.85 each, would be made on the 25th of each month from December 2003 through May 2004.)

Ursery was requested to return the proposed agreement, once signed, to Option One. *Ursery failed to sign and return the proposed repayment agreement.* In addition, the first payment, of $2,793.80, was not received by May 25, 2003.

Process notes show that Option One attempted to telephone Ursery on several dates, including May 28 and 30, 2003, because a signed repayment plan had not been received and it was urgent that it be received. Option One's process notes indicate that Ursery's phone number was either disconnected or not working. On June 5, 2003, Option One received another check for $1,793.80. A process note of June 6, 2003, indicates that "*pending signed pay plan*," Option One was holding the checks for $1,000 and $1,793.80. (Emphasis added.)

Process notes show that Option One continued to try to reach Ursery on June 6, 11 and 17, 2003, but continued to be unable to do so because his number was not in service or was not connected. Finally, on June 27, 2003, the process note states: "*Have been unable to reach borrower. . . . Never received the signed pay plan back and the first payment was due 06/25 . . . not received . . . . Plan is not valid.* Returning funds to borrower and proceeding with foreclosure." (Emphasis added.) A June 28, 2003, process note from 8:35 a.m. states: "*Payment plan is void . . . .* Funds being returned to borrower." (Emphasis added.)

An 8:41 a.m. process note of June 28, 2003, states:

> *Payment plan was never received signed. . . .* Borrower received the pay plan via overnight FedEx 05/23/03 at 2:95 [sic] p.m. signed [for] by the borrower. . . . Borrower had a sale set and it was cancelled. . . Borrower made no att[e]mpt to contact us after hold placed on account . . . . Funds have been returned. . . . *First payment was due on the account 06/25/03 and has never been received.* Hold released and proceeding with foreclosure. [Emphases added.]

In a letter dated June 28, 2003, Option One advised Ursery that it had declared a *breach for non-payment* and that "*Your failure to comply with the conditions set forth in the agreement has caused Option One to declare it null and void.* Option One will continue with foreclosure

proceedings without further demand. The terms of your existing loan and the acceleration thereof remain in full force and effect." (Emphasis added.)

On July 1, 2003, Option One sent letters to Ursery returning his payments of $1,000 and $1,793.80. Each of these letters stated: "*This payment is being returned to you due to being insufficient to cure the default* on the above referenced loan or we have been unable to contact you in order to make an appropriate payment arrangement. . . ." (Emphasis added.) A process note of July 1, 2003, states: "Called borrower . . . number not in service . . . . Borrower has not responded to contact letter previously sent . . . . *Borrower never returned signed pay plan or sent first payment*. . . . No contact with borrower today." (Emphasis added.)

On July 7, 2003, Option One received a money order from Ursery for $813.85. On July 17, 2003, Option One returned the money order to Ursery.

An August 5, 2003, process note indicates that Ursery spoke with Option One, contesting late fees: "Borrower also questioning every fee/charge ever assessed, referred him to note (section 6 & 7) & when he complained of hazard insurance, explained that too and provided copies of F/O policies."

3

A foreclosure sale[5] occurred on August 7, 2003, at which Option One was the winning bidder at $46,763.12. On that same date, Option One received a sheriff's deed. There is no claim by Ursery to any technical deficiency in the foreclosure process, sale or sheriff's deed.

When the six-month redemption period[6] expired on February 7, 2004, *title vested in Option One*, because Ursery had not brought any action to challenge the acceleration, foreclosure and sale. Ursery failed to vacate the property.

B

1

Option One immediately initiated eviction proceedings in district court. Ursery defended and counterclaimed, alleging breach of contract, breach of implied covenant of good faith and fair dealing, fraud, violation of the Michigan consumer protection act (MCPA), negligence and intentional infliction of emotional distress. The district court concluded that it did not have

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[5] The RJA further provides, in relevant part: "The sale shall be at public sale . . . and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff . . . of the county, to the highest bidder." MCL 600.3216.

[6] MCL 600.3240(8) provides: "[I]f the amount claimed to be due on the mortgage at the date of the notice of foreclosure is more than 66-2/3% of the original indebtedness secured by the mortgage, the redemption period shall be 6 months." See also *Kubczak v Chemical Bank & Trust Co*, 456 Mich 653, 657; 575 NW2d 745 (1998).

jurisdiction to hear and determine Ursery's defenses and claims, and in March 2004, granted Option One a judgment of possession.[7]

Ursery appealed. The circuit court, finding the facts to be undisputed, affirmed on August 23, 2004.[8] The circuit court stated that "the triable issues in summary proceedings to obtain possession of property do not include those regarding the validity or effectiveness of the mortgage."[9]

2

On August 29, 2004, Ursery filed *this* action in circuit court. Ursery asserts essentially the same claims as were made before.

On October 13, 2004, in the action for possession, this Court denied Ursery's delayed application for leave to appeal (from the circuit court's affirmance of the district court's judgment of possession), "for lack of merit in the grounds presented."[10] Ursery attempted to appeal to the Supreme Court, which denied leave to appeal on January 13, 2005.[11]

Vis-à-vis Ursery's circuit court complaint in the case at bar, Option One filed a motion for summary disposition under MCR 2.116(C)(8) and (10) and Ursery responded. On May 30, 2006, the circuit court again rejected Ursery's arguments, granted summary disposition of all counts under MCR 2.116(C)(8) and (10), and "ORDERED that the Stay of the Writ of Restitution in Case Number 04-305571 LT of the 36th District Court regarding the subject property commonly known as 1987 Collingwood is lifted."[12]

C

In count I, for breach of the loan and mortgage agreement, Ursery contends that Option One imposed late fees before they were due; delayed the posting of mortgage payments so that it could charge late fees; and denied Ursery his contractual right to reinstate his mortgage. Ursery further contends that even after he met all of the requirements imposed by Option One for reinstatement, Option One returned the payments and foreclosed on the mortgage. Ursery

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[7] *Option One Mortgage Corp v Ursery*, unpublished order of the 36th district court, entered March 4, 2004 (docket no. 04-030557-LT).

[8] *Option One Mortgage Corp v Ursery*, unpublished opinion of the Wayne circuit court, issued August 23, 2004 (docket no. 04-407995-AV).

[9] *Id*. at 3.

[10] *Option One Mortgage Corp v Ursery*, unpublished order of the Court of Appeals, entered October 13, 2004 (Docket No. 257844).

[11] *Option One Mortgage Corp v Ursery*, 471 Mich 958; 691 NW2d 453 (2005).

[12] *Ursery v Option One Mortgage Corp*, unpublished order of the circuit court, entered May 30, 2006 (docket no. 04-427037-CK).

requests that the court set aside the foreclosure sale, vacate the resulting sheriff's deed, quiet title to the property in him, and award damages resulting from foreclosure.[13]

In count II, Ursery contends that the parties entered into an oral agreement on May 19, 2003, whereby Ursery agreed to pay $1,000 to bring his account current. Ursery alleges that he made the $1,000 payment, in addition to a payment of $1,793.80, and that on May 20, 2003, Option One told him these payments terminated the foreclosure proceedings and that his mortgage would be reinstated. Ursery alleges that on May 22, 2003, Option One told him that he would have to make additional payments of $3,985.77 to stop foreclosure. Ursery makes other (rather conclusory) allegations, e.g., that Option One breached the alleged oral agreement. Ursery seeks the same relief as in count I.

In Count III, Ursery alleges that Option One breached an implied covenant of good faith and fair dealing through the actions described in previous counts. In count IV, for "fraud and misrepresentation," Ursery alleges that Option One "fraudulently breached its contract with Plaintiff . . . [by] charging exorbitant and bogus fees, costs, and charges before any fees, costs or charges were due." Ursery also alleges that Option One "fraudulently breached its contract with Plaintiff . . . by . . . delaying the posting of Plaintiff's mortgage payments so Defendant could charge exorbitant and bogus fees, costs and charges . . . ." Ursery makes other rather conclusory allegations. The nature of the fraud is not pleaded with specificity or clarity. Ursery seeks the same relief as in count I.

In count V, for violation of the MCPA, Ursery alleges that Option One "engaged in unfair, unconscionable and deceptive methods, acts and practices in the conduct of trade or commerce[.]" Ursery makes numerous other allegations in this verbose, repetitive, nine-page count. Ursery seeks the same relief as in count I.

In count VI, Ursery claims that Option One committed negligence by failing to deal with plaintiff in a fair, reasonably prudent and good-faith manner. In count VII, for abuse of process, Ursery claims that Option One willfully used the process of foreclosure by advertisement to foreclose on his property even after he had met all of the allegedly unfair conditions and terms Option One mandated for reinstatement. In count VIII, Ursery alleges that Option One committed intentional infliction of emotional distress through its "predatory schemes" involving threats, fraud and harassment.

II

We review summary disposition decisions de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). To the extent that this dispute requires us to interpret the parties' agreement(s), the proper interpretation of a contract is a question of law, *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 47; 664 NW2d 776 (2003); *Randolph v Reisig*, 272

[13] Ursery does not specify whether the note and mortgage would also be reinstated if the foreclosure and sale were vacated. Nor does Ursery specify whether he seeks to vacate the judgment of possession.

Mich App 331, 333; 727 NW2d 388 (2006), reviewed de novo, *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). To the extent that this dispute requires us to engage in statutory interpretation (of the statute of frauds or the MCPA), the interpretation of a statute is a question of law, reviewed de novo. *Newton v Bank West*, 262 Mich App 434, 437; 686 NW2d 491 (2004).

III

A

Ursery first argues that summary disposition was improper on all counts because Option One only supported its motion for summary disposition with inadmissible hearsay. We disagree. Only the pleadings are considered when deciding a motion under MCR 2.116(C)(8), so any supporting evidence provided by Option One would not have been considered. We agree that the party moving for summary disposition under MCR 2.116(C)(10) must specifically identify the undisputed factual issues and support its motion by affidavits, depositions, admissions or other documentary evidence. *Reed v Reed*, 265 Mich App 131, 140; 693 NW2d 825 (2005); MCR 2.116(G)(4). Inadmissible evidence does not create a genuine issue of material fact. *McCallum v Dep't of Corrections*, 197 Mich App 589, 603; 496 NW2d 361 (1992). In this case, Option One supported its motion for summary disposition with documentary evidence. While a proper foundation would have to be laid before such documents would be admitted at trial, they were admissible, and under the plain language of the court rules, they provide proper support for a motion for summary disposition.

Ursery next argues that the trial court erred in granting summary disposition on all counts because it erroneously assumed that the issues in this case had already been adjudicated. The trial court did inquire of Ursery whether the district court had already ruled on these issues. However, Ursery assured the trial court that the district court had not, and it is clear that the trial court made its ruling on the basis of its own findings.

B

Ursery seeks to set aside the mortgage foreclosure, sale and sheriff's deed, and reinstate the mortgage.[14] For two reasons, Ursery is not entitled to this relief.

1

Ursery already sought this relief in the district court case, and lost. Ursery now seeks to mount a collateral attack on the foreclosure, sale and sheriff's deed (and, necessarily, the judgment of possession). This is improper. *People v Sessions*, 474 Mich 1120; 712 NW2d 718 (2006); *Fieger v Cox*, ___ Mich App ___, ___; ___ NW2d ___ (2007) ("They [plaintiffs] also skirted our well-established statutes and court rules for appealing the district court's issuance of

[14] Ursery also seeks damages resulting from the foreclosure, sale and sheriff's deed. For instance, Ursery alleges that he suffered emotional trauma as a result of the foreclosure.

search warrants and subpoenas *and instead improperly mounted a collateral attack on the investigation by filing two original actions* before a circuit court judge . . ." (emphasis added)); *Kosch v Kosch*, 233 Mich App 346, 353; 592 NW2d 434 (1999) ("*Defendant's failure to file an appeal from the original judgment . . . precludes a collateral attack* on the merits of that decision").[15]

Accordingly, we conclude that Ursery's requested relief of setting aside the mortgage foreclosure, sale and sheriff's deed (and, necessarily, the judgment of possession) is invalid as a matter of law under the prohibition of collateral attacks on a judgment. In our opinion, under MCR 2.116(C)(8) and (10), the trial court correctly granted summary disposition, albeit on other grounds, on these claims for relief. This Court will not reverse where the lower court reaches the right result, albeit for a different reason. See, e.g., *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005).

2

By requesting a reversal of the acceleration, foreclosure, sale and sheriff's deed, Ursery seeks specific performance of an alleged oral agreement to reinstate the mortgage. Specific performance is an equitable remedy. *Ruegsegger v Bangor Twp Relief Drain*, 127 Mich App 28, 31; 338 NW2d 410 (1983). But because Ursery did not assert his challenge to the acceleration, foreclosure, sale and sheriff's deed until *very* late – after the six-month redemption period expired (at which time title vested in Option One[16]) – Ursery is guilty of laches. *Jackson Investment Corp v Pittsfield Products, Inc*, 162 Mich App 750, 752-753; 413 NW2d 99 (1987).

In *Jackson Investment Corp*, an analogous instance of laches occurred.

> Defendant Pittsfield Products, Inc., entered into a mortgage agreement with plaintiff Jackson Investment Corporation on May 22, 1984, enabling Jackson to purchase certain property owned by Pittsfield. On September 10, 1985, Pittsfield commenced foreclosure proceedings and published a notice of foreclosure on September 10, 1985. While Jackson has at times asserted that there was a question concerning whether it was actually in default, *Jackson has apparently not taken any legal steps to contest the asserted default*. . . . Jackson received actual notice of the sale sometime between September 10 and September

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[15] See also, e.g., *Estes v Titus*, 273 Mich App 356, ___; ___ NW2d ___ (2006) (referencing "the rule prohibiting a collateral attack on a judgment" and discussing foreign authorities); *In re S M N E*, 264 Mich App 49, 54; 689 NW2d 235 (2004) ("To require the court to inquire into ability to pay in cases such as this would be a repetitious and inefficient use of judicial resources and *would essentially allow a collateral attack of the support order*" (citation omitted; emphasis added)).

[16] See *Sanderson v Ressler*, 223 Mich 232;193 NW 829 (1923) (where mortgagee foreclosed and purchased the property, and after the period of redemption expired, second mortgagees acquired the property from the mortgagee, legal title vested in them).

> 17. On October 3, 1985, the property was sold at public auction to defendant Interface Systems, Inc., for $310,000. The interval between the date of the first published notice and the date of the sale was twenty-three days, five days less than the circuit court construed was required by statute. Interface received a sheriff's deed on the date of the sale. Thereafter, Interface began paying insurance premiums, property taxes, and maintenance and utility expenses.
>
> On March 4, 1986, Jackson filed the instant complaint and sought an order to show cause why the foreclosure sale should not be vacated. The complaint was based on the fact that the sale had occurred five days before the four-week publication period had expired. The circuit court construed plaintiff's motion as a motion for summary disposition and denied it. Thereafter, the court ruled that the sale was defective. However, the court refused to hold that the consequence of the defect was that the sale was void. Rather, the trial court held that the defect rendered the sale voidable. After examining the equities of the case, *the court found plaintiff guilty of laches for waiting until five months of the six-month redemption period had passed before bringing suit to invalidate the sale*. . . . [*Jackson Investment Corp, supra* at 751-753 (emphases added; footnote omitted).]

This Court affirmed. We reasoned:

> No complaint was lodged that the sale could not be held before October 8, 1985, until after the sale had been completed and the property sold to a third party. *The instant complaint was not filed until five months of the six-month redemption period had passed*. . . . To cure the defect (the acceleration of the sale by five days) the circuit court extended the redemption period by forty-three days. At no time during the redemption period has Jackson attempted to redeem the premises. [*Id*. at 756-757.]

The same reasoning applies here, indeed with even greater force. Ursery waited until after the redemption period to file any challenge to the acceleration, foreclosure, sale and sheriff's deed. Ursery is guilty of laches, and to a remarkable degree. *Jackson Investment Corp, supra* at 756-757. Therefore, Ursery is not entitled to specific performance of an oral agreement to reinstate the mortgage. It is far too late to challenge the acceleration, foreclosure, sale and sheriff's deed.

C

1

In count I, Ursery alleged that Option One breached a loan and mortgage agreement that he does not attach to his complaint.[17] "The essential elements of a valid contract are the

[17] MCL 2.113(F)(1) provides:

(continued…)

following: (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation." *Hess, supra* at 592 (internal quotation marks and citation omitted). Here, however, plaintiff has failed to allege and show a breach of the terms of the note.

Contracts are enforced according to their terms as a corollary of the parties' liberty of contract. *Rory, supra* at 468. This Court examines contractual language and gives the words their plain and ordinary meanings. *Wilkie, supra* at 47.[18] "[A]n unambiguous contractual provision is reflective of the parties' intent as a matter of law," and "[i]f the language of the contract is unambiguous, we construe and enforce the contract as written." *Quality Products & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003).[19] Courts may not impose an ambiguity on clear contract language. *City of Grosse Pointe Park v Michigan Muni Liability & Prop Pool*, 473 Mich 188, 198; 702 NW2d 106 (2005). A contract is ambiguous when two provisions "irreconcilably conflict with each other," *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 467; 663 NW2d 447 (2003), or "when [a term] is equally susceptible to more than a single meaning." *City of Lansing Mayor v Michigan Pub Service Comm*, 470 Mich 154, 166, 680 NW2d 840 (2004). Whether a contract is ambiguous is a question of law. *Wilkie, supra* at 47. Only when contract language is ambiguous does its meaning become a question of fact. *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).[20]

Our Supreme Court's contracts jurisprudence emphasizes the limited role of courts in contract disputes: viz., *courts enforce unambiguous contract terms*. *Quality Products & Concepts Co, supra* at 375. For instance, courts generally may not attempt to evaluate whether a

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(…continued)

> If a claim . . . is based on a written instrument, *a copy of the instrument or its pertinent parts must be attached* to the pleading as an exhibit unless the instrument is
>
> * * *
>
> (b) in the possession of the adverse party and the pleading so states;
>
> . . . . [Emphasis added.]

Count I does not comply with these requirements.

[18] In other words, "where contract language is neither ambiguous nor contrary to . . . statute, the will of the parties, as reflected in their agreement, is to be carried out, and thus the contract is enforced as written." *Muci v State Farm Mut Automobile Ins Co*, 267 Mich App 431, 435; 705 NW2d 151 (2005).

[19] In other words, if a contract is unambiguous, its meaning is for the court to decide. *Davis v LaFontaine Motors, Inc*, 271 Mich App 68, 73; 719 NW2d 890 (2006).

[20] The rule of *contra proferentum* (construction of an agreement against its drafter) is used only when there is a true ambiguity and the parties' intent cannot be discerned through all conventional means, including extrinsic evidence. *Klapp, supra* at 470-471.

contract is one of "adhesion." See *Rory*, *supra* at 477. "An 'adhesion contract' is simply that: a *contract*. It must be enforced according to its plain terms unless one of the traditional contract defenses applies." *Id*.

Other decisions emphasize the limited role of courts in contract disputes. *Wilkie* held that the doctrine of reasonable expectations is inconsistent with courts' limited role of enforcing unambiguous contracts:

> This approach, where judges divine the parties' reasonable expectations and then rewrite the contract accordingly, is contrary to the bedrock principle of American contract law that parties are free to contract as they see fit, and the *courts are to enforce the agreement as written absent some highly unusual circumstance*, such as a contract in violation of law or public policy. [*Wilkie, supra* at 51 (footnotes omitted; emphasis added).]

Parties are entitled to the benefit of their bargain: "The general rule [of contracts] is that competent persons shall have the utmost liberty of contracting and that their agreements voluntarily and fairly made shall be held valid and enforced in the courts." *Id*. at 62 (internal quotation marks and citations omitted).

2

Ursery also alleged that Option breached the contract by delaying the posting of payments in order to charge more late fees. However, in its response to Option One's motion for summary disposition, which relied on the payment log to show that there is no question of fact in dispute, Ursery merely relied on his allegations for this claim and failed to go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact existed. We therefore conclude that summary disposition pursuant to MCR 2.116(C)(10) was proper for that part of Count I.

3

Ursery claims that Option One breached the note by imposing "bogus" late fees. We disagree.

Ursery points to late fees assessed on the 16th day of certain months. Under the plain terms of the note, a late charge could be assessed if Option One did not *receive* payment by the end of 15 calendar days after the due date, which was the first of the month. "If the Note Holder has not *received the full amount of any monthly payment by the end of 15 calendar days* after the date it is due, I will pay a late charge to the Note Holder." (Emphasis added.)

But Ursery does not allege that Option One received the payments at issue by the end of 15 days after the due date. Therefore, Ursery failed to state a claim on which relief may be granted under MCR 2.116(C)(8). In addition, Ursery failed to present evidence that Option One received his payments by the end of 15 days after the due date. Therefore, summary disposition was also proper under MCR 2.116(C)(10).

In addition, the entire late fee issue is nothing more than a red herring. *Even if Ursery is correct that late fees were assessed early, this would not entitle Ursery to reverse the foreclosure, sale and sheriff's deed, or to receive damages therefor*. Logically, an acceleration of the debt and exercise of the power of sale are not rendered invalid just because late fees were imposed too early. The note's definition of default clearly provides that a default exists if a payment is not made when due, and payments were clearly due on the first of each month. Therefore, whenever Ursery failed to make a payment by the first of the month, he was in default, and Option One was entitled to exercise its contractual remedies (even if it could not yet impose a late fee).

Ursery does not allege that he made the required payments when due, i.e., on the first of each month. Clearly, from the documentary evidence, he did not always do so (indeed, not infrequently, he failed to do so). Under the plain terms of the note, Ursery was in default when he failed to make a payment on the first day of each month. Under the plain terms of the note, Option One was entitled, upon each[21] default by Ursery, to accelerate the debt and exercise its power of sale. Therefore, Ursery's count I fails to state a claim on which relief may be granted. MCR 2.116(C)(8). Moreover, Ursery fails to present evidence that he made all required payments when due. Accordingly, his count I fails to generate a genuine issue of material fact. MCR 2.116(C)(10).

D

In count II, Ursery alleged that Option One breached an oral agreement. While Ursery does not clearly state the terms of this alleged agreement, he does state, below the title of this count: "Re: Oral Agreement entered on or about May 19, 2003." Thus, it appears that Ursery is alleging that he and Option One entered into an oral agreement consisting of a payment plan and reinstatement. For three reasons, count II was correctly dismissed.

1

The mortgage does not permit oral modifications. It states: "This Security Instrument may be modified or amended *only by an agreement in writing* signed by Borrower and Lender." (Emphasis added.) Thus, Ursery's claim that an oral agreement existed and was breached by Option One fails to state a claim on which relief may be granted. MCR 2.116(C)(8). Moreover, Ursery presents no evidence that he signed the proposed payment plan, which, by its plain language, was clearly conditional upon his signature. In the absence of such evidence, Ursery has failed to raise a genuine issue of material fact. MCR 2.116(C)(10).

2

Moreover, Ursery does not allege that his payments complied with the deadlines in the repayment plan proposed by Option One. As such, Ursery fails to state a claim on which relief

[21] Clearly, Option One exercised remarkable forbearance in this matter, by not foreclosing on the property despite repeated defaults by Ursery.

may be granted. MCR 2.116(C)(8). Furthermore, there is no evidence in the record that Ursery's payments of $1,000 and $1,793.80 complied with the deadlines in the proposed repayment plan. On the contrary, it appears from the documentary evidence that Ursery did *not* comply with the proposed payment plan. Therefore (even assuming an oral agreement existed and was enforceable), Option One was not obliged to discontinue foreclosure and reinstate the loan. Ursery has failed to raise a genuine issue of material fact. MCR 2.116(C)(10).

3

Furthermore, even assuming the parties reached an oral repayment plan agreement, and that Ursery complied with its terms, enforcement of the oral accommodation is barred by the statute of frauds. See *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 459; ___ NW2d ___ (2006). Michigan's principal statute of frauds, MCL 566.132, provides, in relevant part:

> (2) An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:
>
> (a) A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.
>
> (b) *A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan*, extension of credit, or other financial accommodation.
>
> (c) A promise or commitment to waive a provision of a loan, extension of credit, or other financial accommodation. [Emphasis added.]

"Well established principles guide this Court's statutory construction efforts. We begin our analysis by consulting the specific statutory language at issue." *Provider Creditors Comm v United American Health Care Corp*, ___ Mich App ___, ___; ___ NW2d ___ (2007) (internal quotation marks and citations omitted). "This Court gives effect to the Legislature's intent as expressed in the statute's terms, giving the words of the statute their plain and ordinary meaning." *McManamon v Redford Charter Twp*, Mich App 131, 134; ___ NW2d ___ (2006), citing *Willett, supra* at 48. "When the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written." *McManamon, supra* at 136. "This Court does not interpret a statute in a way that renders any statutory language surplusage . . . ." *Id.*, citing *Pohutski v City of Allen Park*, 465 Mich 675, 684; 641 NW2d 219 (2002).

By the plain language of the statute of frauds, oral agreements for a delay in repayment of a loan are unenforceable. MCL 566.132(2)(b). Thus, even if there was an oral agreement here (which Ursery has failed to prove), its enforcement is barred. MCL 566.132(2)(b).

Also, Ursery cannot rely on the proposed written repayment plan (which, in any event, is not the basis for count II). Although the proposed written repayment plan is on Option One's

letterhead, it is not signed with an authorized signature (indeed it is not signed by an Option One representative at all).[22] Therefore, the written proposed payment plan cannot save Ursery's count II from summary disposition under MCR 2.116(C)(7). Although the trial court did not dismiss count II under subrule (C)(7), we will not reverse where the trial court reaches the right result, albeit for the wrong reason. *Hess, supra* at 596.

E

In count IV, Ursery alleges fraud and misrepresentation. Fraud must be pleaded with particularity. MCR 2.111(B)(1); *Iron Co v Sundberg, Carlson & Assoc, Inc*, 222 Mich App 120, 124; 564 NW2d 78 (1997). Count IV contains only conclusory allegations (many of which are conclusions of law and not well-pleaded allegations of fact). Indeed, count IV is rife with, and a textbook example of, conclusory allegations. It does not plead specific facts with particularity. Therefore, we conclude that count IV fails to state a claim on which relief may be granted. MCR 2.116(C)(8).[23]

The dissent concludes that Ursery has stated a claim for fraud by claiming Option One misrepresented the late fees owed. Even assuming Ursery has stated a claim for fraud, he has not generated a genuine issue of material fact. As discussed above, Ursery presents no evidence that Option One received his payments by the end of the 15th day after they were due. If Option One did not receive the payments by the end of the 15th day after they were due, then Option One was clearly entitled to impose late fees. By failing to present evidence of facts that are determinative of whether the late fees were valid, Ursery fails to raise a genuine issue of material fact regarding fraud in the imposition of the fees. MCR 2.116(C)(10).

F

In count V, Ursery alleges a breach of the MCPA. Ursery alleges that Option One "engaged in unfair, unconscionable and deceptive methods, acts and practices in the conduct of trade or commerce[.]" This count fails to state a claim on which relief may be granted under MCR 2.116(C)(8), because Option One's business is exempt from the MCPA as a matter of law. *Newton, supra* at 442.

"By its express language . . . the MCPA exempts from itself '*transaction[s] or conduct specifically authorized* under laws administered by a regulatory board or officer acting under

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[22] Even if the letterhead of Option could be construed as an authorized signature, the proposed written repayment plan is expressly conditioned upon several factors, including Ursery's signature. Since Ursery never signed it, Option One's supposed conditional signature would not be operative.

[23] In general, an action for fraud cannot be based on the failure of future events to transpire as represented. See, e.g., *Foreman v Foreman*, 266 Mich App 132, 143; 701 NW2d 167 (2005). To the extent that Ursery's fraud claim is based on Option One's failure to reinstate the mortgage, Ursery's claim fails to state a fraud claim on which relief may be granted. MCR 2.116(C)(8).

statutory authority of this state or the United States.'" *Newton, supra* at 437-438, quoting MCL 445.904(1)(a) (emphasis added). *Newton* also quoted the following passage from *Smith v Globe Life Ins Co*, 460 Mich 446, 465; 597 NW2d 28 (1999):

> [W]hen the Legislature said that transactions or conduct "specifically authorized" by law are exempt from the MCPA, it intended to include conduct the legality of which is in dispute. . . . [W]e conclude that the relevant inquiry is not whether the specific misconduct alleged by the plaintiffs is "specifically authorized." *Rather, it is whether the general transaction is specifically authorized by law, regardless of whether the specific [alleged] misconduct is prohibited. . . .* [*Newton, supra* at 438 (emphasis in *Newton*).]

This test was recently affirmed by our Supreme Court in *Liss v Lewiston-Richards, Inc*, 478 Mich 203, ____; ____ NW2d ____ (2007), where the Court stated: "Applying the *Smith* test, the relevant inquiry 'is whether the general transaction is specifically authorized by law, regardless of whether the specific misconduct alleged is prohibited.'" *Id*. at ____.

In *Liss*, the Court held that "[r]esidential home builders are licensed under the MOC [Michigan Occupational Code] and are regulated by the Residential Builders' and Maintenance and Alteration Contractors' Board[.]" *Liss, supra* at ____ (footnote omitted). The Court further held that "the general transaction at issue in this case, contracting to build a residential home, is 'specifically authorized' by law." *Id*. at ____. The Court concluded that "a residential home builder is 'specifically authorized' to contract to build homes." Whether a general transaction was "specifically authorized" was defined by the *Liss* Court to require that the transaction was "explicitly sanctioned." *Id* at ____. Thus, the question is whether the general transaction between Ursery and Option One was "explicitly sanctioned." *Id*.

The first step is to identify the general transaction between Ursery and Option One. *Liss, supra* at ____. After The Equity Group immediately assigned the note and mortgage to Option One, the relationship between Ursery and Option one became one of borrower and lender (or note holder). These are, in fact, the terms used in the note. Option One was the successor in interest to the original lender. Basically, Option One was the creditor and mortgagee, and Ursery was the debtor and mortgagor. In short, the general transaction was a residential mortgage loan. Compare *Newton, supra* at 436-438.

The mortgage brokers, lenders, and servicers licensing act (MBLSLA), MCL 445.1651 *et seq*., covers, inter alia, mortgage lenders, including any "person who, directly or indirectly, makes or offers to make mortgage loans[,]" and mortgage servicers, including any "person who, directly or indirectly, services or offers to service mortgage loans." MCL 445.1651a(m), (o). The MBLSLA provides that "[a] person shall not act as a mortgage broker, mortgage lender, or mortgage servicer without first obtaining a license or registering under this act," subject to certain exceptions. MCL 445.1652(1). It provides that "[a]n application for, or renewal of, a license shall be made in writing to the commissioner on a form prescribed by the commissioner." MCL 445.1653(1). The commissioner is the commissioner of the office of financial and insurance services of the department of consumer and industry services. MCL 445.1651a(b).

The act further provides:

> If the commissioner determines after investigation that the experience, character, business reputation, and general fitness of the applicant and its officers, directors, shareholders, partners, and affiliates command the confidence of the public and warrant the belief that the applicant and its officers, directors, shareholders, partners, and affiliates will comply with the law and that grounds for revoking, suspending, or denying a license under this act do not exist, the commissioner shall issue a license to, or renew the license of, the applicant to act as a mortgage broker, mortgage lender, or mortgage servicer. [MCL 445.1653(1).]

Thus, the commissioner oversees the licensing of mortgage lenders, just as the Residential Builders' and Maintenance and Alteration Contractors' Board oversees licensing of residential home builders. *Liss*, *supra* at ____. As in *Liss*, the defendant's business in the instant case is subject to licensing requirements. A license is a "'formal permission from a governmental or other constituted authority to do something, as to carry on some business or profession.'" *Liss*, *supra* at ____ n 39. *Liss* stated: "Through the licensure requirement, the statute explicitly sanctions, or 'specifically authorizes,' qualified individuals to engage in residential home building." *Id*. Similarly, here, the MBLSLA, through the licensing requirement, specifically authorizes qualified persons to engage in mortgage lending or mortgage servicing.

In *Liss*, the Court emphasized that "with limited exceptions, contracting to build a residential home is a transaction 'specifically authorized' under the MOC, subject to the administration of the Residential Builders' and Maintenance and Alteration Contractors' Board." *Id*. at ____ (footnote omitted). Here, similarly, with limited exceptions,[24] mortgage lending or servicing is a transaction specifically authorized under the MBLSLA, subject to the administration of the commissioner of the office of consumer and industry services. MCL 445.1653 *et seq*.

Accordingly, the general transaction between Ursery and Option One is explicitly sanctioned under a law administered by a regulatory board or officer acting under statutory authority of this state. MCL 445.904(1)(a). Option One's residential mortgage business is exempt from the MCPA, and summary disposition in favor of Option One on count V was properly granted.

G

In count VI, Ursery alleged that Option One committed negligence by failing to deal with him in a fair, reasonably prudent, and good faith manner. It is well-established that a prima facie case of negligence requires a plaintiff to prove four elements: a duty, a breach of that duty, causation, and damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). "As a general rule, there must be some active negligence or misfeasance to support a tort. There must be some breach of duty distinct from breach of contract." *Rinaldo's Constr Corp v*

[24] The exceptions to the license or registration requirement are found in MCL 445.1652(1)(a) through (c).

Michigan Bell Tel Co, 454 Mich 65, 83; 559 NW2d 647 (1997), quoting *Hart v Ludwig*, 347 Mich 559, 563; 79 NW2d 895 (1956). "In other words, the threshold inquiry is whether the plaintiff alleges violation of a legal duty separate and distinct from the contractual obligation." *Rinaldo's Const Corp, supra* at 83. Here, Ursery did not allege a violation of a legal duty separate and distinct from the contractual obligations. We therefore conclude that summary disposition on Count VI was proper pursuant to MCR 2.116(C)(8).

H

In count VII, Ursery alleged that Option One committed abuse of process by willfully using the process of foreclosure by advertisement to foreclose on his property even after he had met conditions for reinstatement. "To recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981). In other words, a plaintiff must show that the defendant used a proper legal procedure for a purpose other than that which it was designed to accomplish, and a plaintiff need not show that the proceeding was wrongfully initiated. *Friedman, supra* at 30 n 18; *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). Here, Ursery only alleged that the foreclosure attempt was improper, not that Option One attempted to use the foreclosure process for anything other than what foreclosure is designed to accomplish. Because Ursery never alleged that Option One had an ulterior purpose in foreclosing, he failed to state a claim for abuse of process, so summary disposition of count VII was proper pursuant to MCR 2.116(C)(8).

I

In count VIII, Ursery alleged that Option One committed intentional infliction of emotional distress through its predatory schemes involving threats, fraud, and harassment. "In order to state a claim of intentional infliction of emotional distress, a plaintiff must show (1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 582; 603 NW2d 816 (1999). "Liability for such a claim has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community." *Teadt, supra* at 582-583. The court should initially "determine whether the defendant's conduct reasonably may be regarded as so extreme and outrageous as to permit recovery." *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). However, "where reasonable [persons] may differ, it is for the jury, subject to the control of the court, to determine whether, in the particular case, the conduct has been sufficiently extreme and outrageous to result in liability." *Doe, supra* at 91. Here, the essence of Ursery's argument is that Option One breached contracts with him in various ways and foreclosed on his property. This type of activity does not rise to the level of conduct necessary to satisfy the standard in Michigan case law. Because Option One's conduct could not be reasonably regarded as extreme and outrageous, there is no genuine issue of material fact with regard to this claim, so summary disposition on count VIII was proper pursuant to MCR 2.116(C)(10).

J

Ursery also claims that the trial court erred by denying his motion to compel discovery or by refusing to sanction Option One for discovery violations. However, Ursery has not properly presented this issue to us by addressing it in his brief, relating the lower court's decision, or citing any authority in support. *In re Petition by Wayne Co Treasurer for Foreclosure of Certain Lands for Unpaid Prop Taxes*, 265 Mich App 285, 298-299; 698 NW2d 879 (2005). The issue is therefore abandoned, and we will not address its merits. *Knoke v East Jackson Pub School Dist*, 201 Mich App 480, 485; 506 NW2d 878 (1993).

IV

In conclusion, the trial court correctly granted summary disposition on all claims.

Affirmed.

/s/ Kurtis T. Wilder

I concur in result only.

/s/ David H. Sawyer